

## **REMARKS**

### **Procedural Summary and Status of the Claims**

First, Applicants' representatives thank Examiner Poinvil for the courtesy of the telephone interview conducted on January 20, 2004. In the interview, Applicants' representatives confirmed that the references referred to in the Examiner's Attachment to the January 7, 2004 Advisory Action as "Abellow" and "Bellow" are in fact referring to previously-cited U.S. Pat. No. 5,999,908, to Abelow. Also, Applicants' representatives explained their intent to file the instant RCE and Amendment as described below.

As to the claims, claims 1-30 are pending in this application. All claims were rejected, as indicated in the Advisory Action and Examiner's Attachment, mailed on January 7, 2004. Applicants request reconsideration. Claims 1, 12, 14, 18, 21, 22, 25, and 28-30 are hereby amended. Entry of the accompanying Request for Continued Examination (RCE) and this Amendment is to procedurally supercede Applicants' Notice of Appeal, filed June 20, 2003, and is made without prejudice or disclaimer.

### **Applicants' Claims Distinguish Over the Cited Art, Including Abelow**

The Examiner rejected all of Applicants' claims, as summarized in the Advisory Action, mailed on January 7, 2004, in view of Abelow (U.S. Pat. No. 5,999,908). All claims, with the exception of claim 7 were rejected under 35 U.S.C. §102(e), while claim 7 was rejected under 35 U.S.C. §103(a). Applicants respectfully traverse these rejections as follows.

Abelow purports to teach a way to assist product development and "*to accelerate future improvements in the product by means of customer-generated suggestions.*" Abelow, Col. 12, Lines 44-46. Abelow provides a user interface ("*Customer-Based Product Design Module (CB-PD)*") coupled to a product. The CB-PD is described as an attachment, such as a keypad allowing a user to enter data into the keypad to answer questions about the user's experience with the product. Abelow, Col. 10, Lines 50 et seq. When the user uses the product, the user answers some questions posed by the CB-PD, and the results are sent to the product's maker to guide future design and development of the product. This way customers are involved "*in the design and evolution of products and services.*" Abelow, Col. 8, Lines 36-37. New features are purportedly designed into the product and then provided to the user. Abelow's method is given

as an alternative to development through “*market research*.” Abelow, Col. 6, Lines 56-58. Abelow thus teaches, if anything, designing new features and delivering them to users in future designs of the product. Abelow does not teach or suggest using a detected pattern of use to initiate a communication to the user to enable greater functionality in the device from a set of functions available in the device.

By contrast, Applicants’ claims are directed to brokering upgraded resources or functions in a product, which has already been designed and provided to the user. The product includes a set of functions, and the user originally only accesses a subset of the set of functions available. Upon analyzing of a pattern of use, the system initiates a communication to the user, alerting the user to upgraded or greater functionality that is available in the set but not the subset of functionality.

Therefore, while Abelow is directed to product development of future features not available in the product, Applicants provide upgraded functionality from a set of functions available in the product. Applicants have amended their independent claims to make this distinction clearer. Other distinctions and limitations also exist, which patentably distinguish the Applicants’ claims from the art of record, including Abelow.

To wit, claim 1 now recites, inter alia:

*“... providing a computer system ... that initially provides to the user a subset of software product functionality from a set of available functions, ... and ... initiating, by the computer system, communication with the user of an availability of a product functionality ... within the set of available functions, but not within the subset ...”*

Since Abelow does not teach or suggest brokering upgraded functions from a set of available functions but not within such a subset, Abelow does not anticipate the claim, and the rejection given under 35 U.S.C. §102(e) was improper.

Similarly, amended independent claims 12, 18, 21, 22, and 25 recite limitations clarifying that the greater functionality is derived from a set of functions available in the product, but not within the subset of functions in place at the time the pattern of use was identified.

Applicants’ dependent claims are allowable for at least the same reasons as those

provided above, and include additional bases for patentability. For example, dependent claim 7, which depends from independent claim 1, recites the use of a fuzzy algorithm to the collected data, which is not disclosed or suggested in Abelow, and provides added reasons for patentability of the claim.

### Conclusion

Applicants again thank the Examiner for searching, examining, and interviewing this application. As explained above, the cited art does not teach or suggest the limitations recited in each of the Applicants' claims as pending. Accordingly, claims 1-30 should now be allowed.

Applicants hereby request that the period for filing the instant Amendment be extended for five months' time. The Commissioner is hereby authorized to charge the required fee of \$1005.00 for filing the request for extension of time to our Deposit Account No. 08-0219.

No other fees are believed to be due with this response. However, please charge any additional fees or credit any overpayments to Deposit Account No. 08-0219.

Respectfully submitted,

For Applicants

Date: \_\_\_\_\_

Jan. 20, 2004

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